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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 PAMELA FOX KUHLKEN,
11 Plaintiff,
12 v.
13 COUNTY OF SAN DIEGO, SAN
14 DIEGO SHERIFFS DEPUTY D. SMITH
15 (Id # 1024) and DOES 1-5,
16 Defendants.

Case No.: 3:16-CV-2504-CAB-DHB

**ORDER ON DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT [Doc. No. 16]**

17 On November 20, 2017, Defendants filed a motion for summary judgment or in the
18 alternative partial summary judgment. [Doc. Nos. 16 – 21.] On December 12, 2017,
19 Plaintiff filed an opposition. [Doc. No. 25.] On December 19, 2017, Defendants filed a
20 reply to the opposition. [Doc. No. 29.] For the reasons set forth below, the motion for
21 summary judgment is **GRANTED**.

22 I. PROCEDURAL BACKGROUND

23 On October 6, 2016, Plaintiff filed the original complaint against Defendants.
24 [Doc. No. 1.] On October 8, 2016, Plaintiff filed a First Amended Complaint (FAC).
25 [Doc. No. 3.] The FAC contains the following causes of action:
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1 1. Unreasonable Seizure (Detention/Arrest)(42 U.S.C. § 1983) against
2 Deputy Smith;
3 2. Unreasonable Seizure (Excessive Force)(42 U.S.C. § 1983) against
4 Deputy Smith;
5 3. Negligence under California Law against Deputy Smith and County of
6 San Diego;
7 4. False Arrest under California law against Deputy Smith and County of
8 San Diego;
9 5. Battery under California Law against Deputy Smith and County of San
10 Diego; and
11 6. Violation of California Civil Code § 52.1 against Deputy Smith and
12 County of San Diego.
13 [Doc. No. 3.]

14 II. FACTUAL BACKGROUND

15 On Sunday, February 21, 2016, plaintiff Pamela Fox Kuhlken (“Fox”) took her
16 daughter to the Epic Volleyball Club, located at 13955 Stowe Drive, Poway, CA, for a
17 tournament. She picked her up about 8:30 a.m. and about 8:55 a.m., dropped her off at
18 the front door and went to look for a parking spot. [Doc. No. 25-10 (Fox Depo.), at
19 40:13-17, 52:25-53:25.] She pulled into a spot some distance from the entrance, intending
20 to look for a closer one, preferably in the shade. [Id., at 53:4-10.]

21 After a few minutes Fox saw two spaces open up. She drove over and began
22 slowly pulling into the one of them. [Id., at 57:1-3; 58:3-9.] She did not see any cars
23 circling the lot looking for spaces. [Id., at 59:5-9.] Fox saw a man later identified as
24 Cleon Platts sitting on a traffic island talking to a woman. [Id., at 59:12-18.]

25 As Fox pulled partway into the spot, Platts walked up from her right side and
26 stepped in front of her car. [Id., at 67:5-18, 68:11-15.] Fox stopped, and made a motion
27 for him to move. [Id., at 69: 24-21.] He remained in front of her car and his thighs, hips
28 and waist were touching her car. [Id., at 70:25-71:25.]

She rolled down her driver’s window to ask him to move. [Id., at 73:9-23.] He
shook his head and sat down in front of her car, out of sight. [Id., at 74:14-22.] She heard
kicking underneath her car. [Id., at 75:8-76:2.] She became scared and thought he might
be staging an accident for some sort of insurance scam. [Id., at 76:3-11.]

1 A woman, later identified as Platts' wife, then arrived and started screaming "What
2 are you doing? Are you trying to kill my husband? You're trying to run him over," and
3 began taking pictures or video with her phone. [Id., at 77:18-78:7, 78:17-19.] Mrs. Platts
4 also began kicking Fox's car. Fox then called 9-1-1. [Id., at 80:13-21.]

5 The call was logged as having been made at 9:15:22. [Doc. No. 24-4, Transcript of
6 9-1-1 call, at 1-3.] Fox provided the 9-1-1 operator a detailed description of the events,
7 gave her name and telephone number, the other party's license plate, stated she was going
8 to move to another parking spot and agreed to stay separated from Platts until the
9 deputies arrived. [Id.]

10 Deputy Sheriff Darin Smith was dispatched by an emergency operator to respond
11 to an argument over a parking space. [Doc. No. 25-14 (Smith Depo.), at 21:14-22.] While
12 en route, a second caller to 9-1-1 (Mrs. Platts) reported that one of the involved parties, a
13 female in a red car, used her car to run over the other person. [Doc. No. 25-7, at 1-4; Doc.
14 No. 25-14, at 21:25-22:21; Doc. No. 17, Ex. A (Smith Decl.), ¶ 3.] Consequently,
15 Deputy Smith understood he needed to investigate not only an argument, but a possible
16 assault with a deadly weapon. [Id.]

17 Deputy Smith was the first law enforcement officer to arrive on scene. [Id., ¶ 4.]
18 When he pulled into the Epic parking lot, he saw people standing around and Platts
19 sitting on the curb. [Id.] Deputy Smith parked his patrol SUV in the aisle near where
20 Platts was sitting. [Id.] He exited his vehicle and began speaking to Platts. Platts reported
21 that a woman ran over his foot and had driven away. Deputy Smith's conversation with
22 Platts only lasted about 15 to 20 seconds when Fox arrived. Platts identified her as the
23 lady involved in the dispute. [Id.]

24 The following is Fox's description of the subsequent events. Upon approaching
25 Deputy Smith, Fox informed him that she had called 9-1-1 and wanted to know if he was
26 there in response to her call. Deputy Smith dismissively responded that it was all one
27 situation, and demanded her identification. [Doc. No. 25-10, at 107:15-16, 111:19-25,
28 113:1-114:1, 117:12-19.]

1 Deputy Smith's tone was aggressive and frightening when he demanded her
2 identification, and, taken aback, Fox responded "Excuse me?" Deputy Smith then
3 threatened her saying "Do you want to be tased?" She responded that she called for help
4 and he couldn't tase her. [Doc. No. 25-10, at 115:20-25, 121:1-14.]

5 Fox testified that Deputy Smith then demanded she give him her purse and grabbed
6 for it. [Id., at 124:1-24.] She resisted his attempt to take her purse. [Id., at 125:9-17.]
7 Then Deputy Smith put her arms behind her back and handcuffed Fox. [Id., at 127:24-
8 25.] Fox testified that Deputy Smith then left her standing alone facing his patrol car and
9 went to speak with Platts about five to six feet away. [Id., at 142:5-22, 143:23-144:2.]

10 Fox testified at that point the cuff slipped off her right hand. She turned around to
11 face Deputy Smith, raised both hands to show Deputy Smith that the handcuff had slid
12 off her right hand and said, "Excuse me," to get his attention. [Id., at 132:7-15, 139:10-
13 23, 143:6-8.] She testified that in response Deputy Smith came back to her, pulled her
14 arms behind her, put his leg around her leg and threw her to the asphalt. [Id., at 144:15-
15 20.]

16 She contacted the ground with her head and shoulders, scraping her right front
17 shoulder, and hitting the top of her head causing two hair clips to break leaving cuts and
18 scrapes on her scalp. [Id., at 145:12-146:22, 147:5-25.] Deputy Smith then recuffed Fox
19 tightly, and with the assistance of another man, off-duty City of Riverside police officer
20 Sgt. Shank,¹ lifted her to her feet and took her to the back of Deputy Smith's patrol
21 vehicle. [Id., at 148:1-17.] Fox resisted being placed into the vehicle. [Id., at 152:2-22.]
22 With the assistance of Sgt. Shank, Deputy Smith placed Fox in his patrol vehicle and Fox
23 was transported to the Poway Sheriff's Station.

24 The following is Deputy Smith's description of the events starting at his
25 interaction with Fox. As she approached, Fox demanded to know if Deputy Smith was
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28 ¹ Doc. No. 17, Ex. A, ¶7.

1 there in response to her call. He responded, yes, saying it is all one situation and asked for
2 her identification. [Doc. No. 17, Ex. A, ¶ 5.] Fox did not provide her identification, and
3 became defensive and questioned why it was necessary. [Id.] Deputy Smith, who had
4 still not fully assessed the situation, warned Fox that she would be detained if she did not
5 provide her identification and she would need to take a seat in his patrol vehicle until
6 another deputy arrived. [Id.]

7 Fox still did not provide her identification, so Deputy Smith then tried to compel
8 compliance by telling Plaintiff that she may be tased if she did not provide her
9 identification. [Id.] Fox still refused to comply. [Id.] To secure the scene, Deputy Smith
10 decided to place Fox in the back of his patrol vehicle until help arrived. [Id., ¶ 6.] Deputy
11 Smith went to grab Fox by the arm to guide her to the left rear door of his patrol SUV.
12 [Id.] Fox actively and physically resisted Deputy Smith's efforts to move her towards the
13 vehicle. [Id.] Deputy Smith instructed Fox to put down her purse and have a seat in the
14 patrol vehicle. [Id.]

15 Fox continued to refuse and resist so Deputy Smith turned her back around and
16 grabbed hold of both her wrists behind her back. [Id.] Deputy Smith temporarily let go of
17 her right wrist to use his radio to determine the status of the other deputy en route. [Id.;
18 Doc. No. 17, Ex. C (Peterson Decl.), ¶ 3.] Fox took that opportunity to try to spin and
19 face Deputy Smith again. [Doc. No. 17, Ex. A, ¶ 6.] She physically resisted Deputy
20 Smith's efforts to regain control of her right wrist. [Id.]

21 Because of her aggressive physical resistance, Deputy Smith used a take-down
22 maneuver to put Fox on the ground and apply handcuffs. [Doc. No. 25-14, at 47:2-48:14;
23 Doc. No. 17, Ex. A ¶6.] Deputy Smith stated he did the maneuver slower than usual to
24 minimize the impact to Fox. [Id.] Once on the ground, Fox however continued to
25 struggle. [Id., ¶7; Doc. No. 17, Ex. E (Incident Video²)].

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28 ² A bystander, Jean Bralich, recorded part of the incident on a cell phone. [Doc. No. 17, Ex. E.] Deputy
Smith secured a copy. [Doc. No. 17, Ex. A, ¶ 8.] The video is approximately two and half minutes long

1 An off-duty City of Riverside police officer (“Sgt. Shank”) offered to assist Deputy
2 Smith. Together Deputy Smith and Sgt. Shank were able to handcuff Fox and raise her to
3 her feet. Deputy Smith went to adjust the handcuffs when Fox pulled her left arm free.
4 Fox continued to aggressively physically and verbally resist as Deputy Smith and Sgt.
5 Shank tried to get her left wrist back in the handcuffs. They were able to force Fox back
6 into handcuffs and into the back door of the SUV. [Doc. No. 17, Ex. A, ¶7; Doc. No. 17,
7 Ex. E.]

8 While putting her in the back of the patrol SUV, Fox braced her legs and leaned in
9 the opposite direction they were trying to move her. Deputy Smith used his body weight
10 to force her into the vehicle. Once seated, Fox was facing out with her legs hanging out
11 the open door. She hooked her feet around Deputy Smith’s legs and the bottom edge of
12 the open door to prevent him from closing the door. Sgt. Shank entered the back seat
13 from the other rear door and pulled Fox toward him as Deputy Smith moved her legs
14 inside the floorboard with his hands. Deputy Smith and Sgt. Shank were able to close
15 both rear doors at this point. [Doc. No. 17, Ex. A, ¶7; Doc. No. 17, Ex. E.]

16 Deputy Smith placed Fox under arrest for resisting a peace officer in violation of
17 Penal Code section 148(a)(1). [Doc. No. 17, Ex. A, ¶9.] Deputy Smith transported Fox to
18 the Poway Sheriff’s Station. [Id.]

19 While at the station, Fox refused any medical attention. [Id., ¶ 10; Doc. No. 17, Ex.
20 B (Boegler Decl.), ¶¶ 5, 7; Doc. No. 17, Ex. D (Intake Audio Recording).] She was asked
21 and denied having any medical needs at the time. [Doc. No. 17, Ex. A, ¶ 10; Doc. No. 17,
22 Ex. B, ¶¶ 5, 7; Doc. No. 17, Ex. D.] Other than pain to her wrists while handcuffed, she
23 did not complain about pain to anybody during her interaction with law enforcement that
24 day. [Doc. No. 21, Ex. I (Fox Depo.), at 171:1-172:9; Doc. No. 17, Ex. A, ¶ 10; Doc. No.
25 17, Ex. B, ¶ 7; Doc. No. 17, Ex. D.] The only visible injury was a small abrasion to her
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28 and it starts from when Sgt. Shank and Deputy Smith are struggling with Fox on the ground and ends
shortly after they place Fox in the patrol SUV and close the doors.

1 left hand. [Doc. No. 17, Ex. A, ¶ 9; Doc. No. 17, Ex. G (Eight Photos of Fox).] Deputy
2 Smith sustained a scratch to his left hand. [Doc. No. 17, Ex. A, ¶ 9; Doc. No. 17, Ex. H
3 (Three Photos of Deputy Smith's Hand).]

4 Fox was cited for violation of Penal Code section 148(a)(1) and released. [Doc.
5 No. 21, Ex. I, at 173:15-17; Doc. No. 17, Ex. A, ¶ 10.] As a courtesy, Deputy Smith
6 drove her back to Epic and arrived there shortly after noon. [Doc. No. 21, Ex. I, at
7 176:15-177:25; Doc. No. 17, Ex. A, ¶ 10.] Fox made no complaint with the way she was
8 treated at the station. [Doc. No. 21, Ex. I, at 169:11-25.]

9 III. UNDISPUTED FACTS

10 While the parties present different accounts of the interaction between Fox and
11 Deputy Smith, there are certain facts that are undisputed and material. The undisputed
12 evidence shows that Deputy Smith was responding to, at a minimum, an incident
13 involving a vehicle and, potentially, to an assault with a deadly weapon. [Doc. No. 25-
14 14, at 21:14-22:21; Doc. No. 17, Ex. A, ¶ 3.] When Deputy Smith arrived at the scene,
15 he had a brief discussion with Platts. [Id., ¶ 4.] Fox then arrived at the scene and Platts
16 identified her as the person who allegedly ran over his foot with her car. [Id.; Doc. No.
17 25-10, at 110:14-19.] Therefore, it is undisputed that Deputy Smith had the right to detain
18 Fox and ask for her identification.

19 It is also undisputed that Fox failed to provide identification when Deputy Smith
20 requested it. Instead, Fox questioned the need for the request. [Id., at 121:1-4; Doc. No.
21 17, Ex. A, ¶5.] Deputy Smith then warned Fox he would use physical force if she did not
22 provide identification.³ Fox still did not comply. [Doc. No. 17, Ex. A, ¶5.]

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26 ³ Deputy Smith states he first warned Fox that she would be detained if she did not provide
27 identification. [Doc. No. 17, Ex. A, ¶5.] He then warned her she might be be tased if she did not
28 comply. [Id.] Fox testified Deputy Smith immediately threatened to tase her. [Doc. No. 25-10, at
121:1-14.] Nevertheless, it is undisputed that Deputy Smith warned Fox he would use physical force if
she did not provide identification.

1 Finally, it is undisputed that, at numerous times, Fox resisted being detained. [Doc.
2 No. 17, Ex. A, ¶¶ 6, 7.] Most of that resistance is captured on video. [Doc. No. 17, Ex.
3 E.] Fox acknowledged that she purposely resisted Deputy Smith's initial attempt to move
4 her to the patrol SUV:

5 Q. So it's your testimony that as soon as Deputy Smith put his
6 hands on your arm to guide you towards the car, you remained motionless?

7 A. I remained actively passively resisting. I just wanted to hold
8 my person in tact. I had no idea why there was any need to touch me.

9 Q. You used the word "actively passively resisting." What does
10 that mean? Is that active or is it passive?

11 A. I think a passive resistance would be going with the way you
12 were treated. And I was just trying to hold my ground and keep my person
13 in tact and safe and unmolested.

14 Q. So Deputy Smith was trying to move you to your car, and you
15 were trying to stay where you were.

16 Is that an accurate statement?

17 A. Yes.

18 Q. And by you not – strike that.

19 By you resisting, whether it's active or passive, in Deputy Smith's
20 attempt to move you, did you feel that he had to use greater strength to get
21 you to move?

22 A. Yes.

23 [Doc. No. 25-10, at 133:2-24.]

24 Fox also acknowledged that she resisted Deputy Smith's efforts to take her
25 purse after she refused to hand it to him:

26 Q. All right. So he goes to grab – does he grab the purse strap or
27 the purse itself?

28 A. The purse itself.

Q. And do you resist?

A. I held onto my purse.

Q. So, yes, you resisted him grabbing your purse?

A. I – yes. I held onto my purse.

[Id., at 125:9-15.]

Q. And did you still have your purse and your lunch box on your
right shoulder?

A. No. He had pried those off. He had taken those.

Q. Did you resist that part of the process as well?

A. I tried to hold onto my purse. I didn't know what was going on. I did not understand why any of this was necessary. And that was my property. I didn't understand what was going on. That's what I kept asking him: "Why are you doing this? Why are you treating me like this?"

[Id., at 140:5-16.]⁴ Although Fox testified she had no recollection of resisting being handcuffed or why Deputy Smith needed assistance to get her to her feet [id., at 148:1-149:20], she admitted that she resisted Deputy Smith's efforts to put her into the patrol SUV:

Q. Ma'am, you've seen the video, right?

A. I saw the video.

Q. And you can see in the video that you're not allowing yourself to be put in to the car, correct?

A. Yes.

[Id., 152: 18-22.]

DISCUSSION

A. Legal Standard.

Summary judgment is appropriate where “there is no genuine issue as to any material fact and ... the moving party is entitled to judgment as a matter of law.” Fed.R.Civ.P. 56(c). It is the moving party's burden to show there is no factual issue for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). If the moving party meets its burden, the burden shifts to the non-moving party to show there is a genuine issue for trial. *Id.* at 331.

⁴ At this point, Fox testified that Deputy Smith pulled her arms behind her, handcuffed her, and then he walked away. One of the handcuffs simply dropped off because it was too loose, so she showed Deputy Smith her arm with no handcuff. In response, Deputy Smith then threw her to the asphalt and recuffed her. [Doc. No. 25-10, at 127:24-25, 132:7-15, 139:10-23, 143:22-144:16.] Deputy Smith states that when Fox refused to put down her purse and move to his patrol vehicle, he took hold of her wrists behind her back and when she continued to struggle he employed a takedown maneuver and applied handcuffs. She continued to resist the cuffs and being placed in his patrol vehicle. [Doc. No. 17, Ex. A, ¶¶ 6, 7.] The video shows Fox physically and verbally resisting while on the ground, Deputy Smith taking out his handcuffs to restrain her, and Fox then resisting being cuffed and fighting being placed in the patrol vehicle. [Doc. No. 17, Ex. E.]

1 The Court considers the record as a whole and draws all reasonable inferences in
2 the light most favorable to the non-moving party. *Fairbank v. Wunderman Cato Johnson*,
3 212 F.3d 528, 531 (9th Cir.2000). The Court does not make credibility determinations or
4 weigh conflicting evidence. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986).
5 Rather, the Court determines whether the record “presents a sufficient disagreement to
6 require submission to a jury or whether it is so one-sided that one party must prevail as a
7 matter of law.” *Id.* at 251–52.

8 B. Unreasonable Seizure (Detention/Arrest)(42 U.S.C. § 1983) against Deputy Smith.

9 1. Unlawful detention.

10 Plaintiff has abandoned her claim that Deputy Smith unlawfully detained her at the
11 scene. [Doc. No. 25 at 22-23.] Moreover, the undisputed facts demonstrate that Deputy
12 Smith had the right to detain Plaintiff and ask for her identification. Deputy Smith had
13 reasonable suspicion that Fox may have been involved in criminal activity (a possible
14 assault), and could detain her to investigate her involvement.

15 2. Unlawful arrest.

16 Defendants argue Deputy Smith had probable cause to arrest Plaintiff for her
17 failure to provide identification and for delaying, obstructing, and resisting Deputy Smith.
18 [Doc. No. 16-1 at 12-15.] Plaintiff argues the arrest was unjustified. [Doc. No. 25 at 25-
19 28.]

20 “A claim for unlawful arrest is cognizable under § 1983 as a violation of the Fourth
21 Amendment, provided the arrest was without probable cause or other justification.”
22 *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 918 (9th Cir. 2012) (*quoting Dubner v. City &*
23 *Cnty. of San Francisco*, 266 F.3d 959, 964 (9th Cir. 2001)). “Probable cause exists when
24 there is a fair probability or substantial chance of criminal activity.” *Id.* (*quoting United*
25 *States v. Patayan Soriano*, 361 F.3d 494, 505 (9th Cir. 2004)) (*quoting in turn United*
26 *States v. Bishop*, 264 F.3d 919, 924 (9th Cir. 2001)) (internal quotation omitted in *Lacey*)
27 (emphasis added). “It is well-settled that ‘the determination of probable cause is based
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1 upon the totality of the circumstances known to the officers at the time of the search.’ ”
2 *Id.* (quoting *Bishop*, 264 F.3d at 924).

3 “Probable cause exists when police have knowledge at the moment of arrest of
4 facts and circumstances based on reasonably trustworthy information that would warrant
5 a belief by a reasonably prudent person that the person arrested has committed a criminal
6 offense.” *Franklin v. Fox*, 312 F.3d 423, 438 (9th Cir. 2002) (citing *Beck v. Ohio*, 379
7 U.S. 89, 91 (1964); *United States v. Buckner*, 179 F.3d 834, 837 (9th Cir. 1999)). “In
8 general, we must ask whether ‘a prudent person would believe [that Plaintiff] had
9 committed a crime.’ ” *Lacey*, 693 F.3d at 918 (quoting *Dubner*, 266 F.3d at 966). “The
10 evidence need support ‘only the probability, and not a prima facie showing, of criminal
11 activity,’ *Illinois v. Gates*, 462 U.S. 213, 235 (1983), and such evidence need not be
12 admissible, but only legally sufficient and reliable. *Franks v. Delaware*, 438 U.S. 154,
13 165 (1978).” *Franklin*, 312 F.3d at 438 (parallel citations omitted).

14 The undisputed facts show Deputy Smith had probable cause to arrest Plaintiff for
15 failure to provide identification (Cal. Vehicle Code §12951) and for delaying,
16 obstructing, and resisting Deputy Smith in the discharge of his duties (Cal. Penal Code
17 §148(a)(1)). Deputy Smith was dispatched by an emergency operator to respond to an
18 argument over a parking space. While en route, a second caller reported that one of the
19 involved parties, a female in a red car, used her car to run over the other person. Thus, at
20 a minimum, Deputy Smith was responding to an accident involving a vehicle, and
21 potentially to an assault with a deadly weapon.

22 Deputy Smith was the first law enforcement officer to arrive on the scene. When
23 he pulled into the parking lot, he saw people standing around and Platts sitting on the
24 curb. Deputy Smith spoke to Platts, who reported that Plaintiff had run over his foot, and
25 identified Plaintiff as the lady involved in the dispute. Thus, when Deputy Smith asked
26 Plaintiff for her identification, she was legally obligated to provide it to him, *see* Cal.
27 Veh. Code §12951, and her failure to do so was a violation of the law.
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1 Plaintiff knew she was involved in a vehicular incident with Platts, but she asserts
2 she did not know him to be injured as a result, and therefore had no duty under Cal. Veh.
3 Code §§20001, 20003 to provide her identification to Deputy Smith. Consequently she
4 contends her non-compliance could not be the basis of an arrest.

5 The undisputed facts are that Plaintiff, the driver of a vehicle, knew she was
6 involved in a vehicle-related incident with Platts and Deputy Smith was investigating the
7 incident. She was obligated to provide her identification upon the officer's request under
8 Cal Veh. Code §12951(b), regardless of whether she believed Platts was at fault, or
9 uninjured. The facts are undisputed that Plaintiff failed to provide identification when
10 Deputy Smith requested it. Instead, Plaintiff questioned the need for the request and
11 impeded his investigation. Smith warned Plaintiff he might use force if she did not
12 comply. Still, Plaintiff did not comply.

13 Plaintiff argues that her refusal to provide identification was not willful, but that
14 she was merely attempting to ask Deputy Smith about his purpose. [Doc. No. 25 at 28.]
15 However, Plaintiff's failure to understand why the identification was needed does not
16 negate the fact that she was legally obligated to provide it.⁵ Plaintiff also suggests that
17 she was not given an opportunity to provide her identification because everything
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20 ⁵ Plaintiff argues that she did not know why Deputy Smith was asking for her identification, when she
21 was the one who had called 9-1-1, and she had identified herself to the 9-1-1 dispatcher. However,
22 regardless of what information Deputy Smith was given by dispatch, he had a legal obligation to
23 investigate Plaintiff's claim as well as Platts' claim. The Ninth Circuit "has held that '[i]n establishing
24 probable cause, officers may not solely rely on the claim of a citizen witness that [s]he was a victim of a
25 crime, but must independently investigate the basis of the witness' knowledge or interview other
26 witnesses.'" *Hopkins v. Bonvicino*, 573 F.3d 752, 767 (9th Cir. 2009) (*quoting Arpin v. Santa Clara
27 Valley Transp. Agency*, 261 F.3d 912, 925 (9th Cir. 2001)) (*citing in turn Fuller v. M.G. Jewelry*, 950
28 F.2d 1437, 1444 (9th Cir. 1991) ("[P]olice officers ha[ve] a duty to conduct an investigation into ... [a]
witness'[s] report....")). This is true even where the arresting officer has learned information from other
law-enforcement officials. *Mendocino Env'tl. Ctr. v. Mendocino Cnty.*, 192 F.3d 1283, 1293 n. 16 (9th
Cir. 1999) ("Although a police officer is entitled to rely on information obtained from fellow law
enforcement officers, this in no way negates a police officer's duty to reasonably inquire or investigate
these reported facts.") (citation omitted). Therefore, Plaintiff's claim that she was the victim in the
incident and had already identified herself to dispatch is not a justification for her failure to provide
identification, as Deputy Smith had an obligation to investigate her claims as well as the claims of Platts.

1 escalated so quickly. [Doc. No. 25 at 28.] However, the undisputed evidence is that
2 when Deputy Smith asked her for identification, Plaintiff questioned why he needed her
3 identification. Deputy Smith warned Plaintiff she would be physically restrained if she
4 did not provide it, and she was still not forthcoming – all before he attempted to
5 physically restrain her. Moreover there is no evidence that, during this time, Plaintiff
6 ever provided her identification or tried to provide her identification. Therefore, there is
7 no dispute that Plaintiff failed to provide her identification.

8 The facts are also undisputed that Plaintiff physically resisted being detained. A
9 good portion of that resistance is captured on video. Moreover, Plaintiff admitted that
10 she actively resisted Deputy Smith’s efforts to restrain her or put her in the back of the
11 patrol SUV. Therefore, there is no dispute that Plaintiff resisted being detained.

12 Deputy Smith had probable cause to believe Plaintiff was violating the law. “The
13 evidence need support ‘only the probability, and not a prima facie showing, of criminal
14 activity....’ ” *Franklin*, 312 F.3d at 438 (*quoting Illinois v. Gates*, 462 U.S. at 235)
15 (emphasis added); *accord, e.g., Chism v. Washington State*, 661 F.3d 380, 389 (9th Cir.
16 2011). Here, Deputy Smith personally observed Plaintiff fail to provide her identification
17 and physically resist his efforts to restrain her. Moreover, Deputy Smith had knowledge
18 that Plaintiff had been involved in an incident where the other party was accusing her of
19 running over his foot with her car. Because of Plaintiff’s behavior, Deputy Smith was
20 prevented from investigating the veracity of the other party’s claims. However, the facts
21 available to Deputy Smith at the time showed a fair probability that Plaintiff had violated
22 Vehicle Code sections 12951, 20001, 20003 and Penal Code section 148. Therefore, the
23 Court finds as a matter of law that Deputy Smith had probable cause to make an arrest,
24 and there was no Fourth Amendment violation.

25 3. Qualified Immunity.

26 Even if there is a triable issue as to whether there was a Fourth Amendment
27 violation, and whether Deputy Smith lacked probable cause to arrest Plaintiff, Deputy
28 Smith is immune from the unlawful arrest claim as a matter of law. “The doctrine of

1 qualified immunity assumes that police officers do not knowingly violate the law.”
2 *Gasho v. United States*, 39 F.3d 1420, 1438 (9th Cir. 1994). “An officer thus is presumed
3 to be immune from any damages caused by his constitutional violation.” *Id.* “Qualified
4 immunity shields public officials from civil damages for performance of discretionary
5 functions.” *Mueller v. Aufer*, 576 F.3d 979, 992 (9th Cir. 2009). “It is ‘an immunity from
6 suit rather than a mere defense to liability; and like an absolute immunity, it is effectively
7 lost if a case is erroneously permitted to go to trial.’ ” *Id.* (quoting *Mitchell v. Forsyth*,
8 472 U.S. 511, 526 (1985)) (emphasis in original). Qualified immunity protects an officer
9 from suit “when he or she ‘makes a decision that, even if constitutionally deficient,
10 reasonably misapprehends the law governing the circumstances.’ ” *Mueller*, 576 F.3d at
11 992 (quoting *Brosseau v. Haugen*, 543 U.S. 194, 198 (2004)). “Qualified immunity
12 protects ‘all but the plainly incompetent or those who knowingly violate the law.’ ”
13 *Mueller*, 576 F.3d at 992 (quoting *Malley v. Briggs*, 475 U.S. 335, 341 (1986)). “The
14 standard is an objective one that leaves ‘ample room for mistaken judgments.’ ” *Mueller*,
15 576 F.3d at 992 (quoting *Malley*, 475 U.S. at 343). The Supreme Court has “repeatedly ...
16 stressed the importance of resolving immunity questions at the earliest possible stage in
17 litigation.” *Hunter v. Bryant*, 502 U.S. 224, 227 (1991).

18 To determine whether Deputy Smith is immune from suit, the court must consider
19 “whether the official's conduct violated a constitutional right, and if so, whether that right
20 was clearly established at the time of the event in question.” *Mueller*, 576 F.3d at 993
21 (citing *Saucier v. Katz*, 533 U.S. 194, 206 (2001)); accord, e.g., *Pearson v. Callahan*, 555
22 U.S. 223, 232 (2009). It is not “mandatory” to address these two prongs in this order.
23 *Pearson*, 555 U.S. at 232–36. Courts are to “exercise their sound discretion in deciding
24 which prong ... should be addressed first in light of the particular circumstances of the
25 case at hand.” *Id.* at 236; accord *Mueller*, 576 F.3d at 993–94. The court reads disputed
26 facts in the light most favorable to Plaintiff. See, e.g., *Mueller*, 576 F.3d at 982, 994;
27 *Blankenhorn v. City of Orange*, 485 F.3d 463, 477 (9th Cir. 2007) (“Where [material
28 factual] disputes exist, summary judgment is appropriate only if Defendants are entitled

1 to qualified immunity on the facts as alleged by the nonmoving party.”) (*citing Barlow v.*
2 *Ground*, 943 F.2d 1132, 1136 (9th Cir. 1991)).

3 For present purposes, assuming that there was an unlawful arrest, the court must
4 then proceed to the second, “clearly established” prong of the qualified-immunity test. *Cf.*
5 *Mueller*, 576 F.3d at 994 (finding a jury question on constitutional violation and skipping
6 to “clearly established” issue). “The dispositive question in determining whether a right is
7 clearly established is whether it would be clear to a reasonable officer that his conduct
8 was unlawful in the situation he confronted.” *Saucier*, 533 U.S. at 202. Put differently,
9 “[f]or a constitutional right to be clearly established, its contours must be sufficiently
10 clear that a reasonable official would understand that what he is doing violates that right.”
11 *Gravelet-Blondin v. Shelton*, 728 F.3d 1086, 1092–93 (9th Cir. 2013) (*quoting Hope v.*
12 *Pelzer*, 536 U.S. 730, 739 (2002)). “This inquiry ‘must be undertaken in light of the
13 specific context of the case, not as a broad general proposition.’ ” *Mueller*, 576 F.3d at
14 994 (*quoting Saucier*, 533 U.S. at 201); *accord, e.g., Deorle v. Rutherford*, 272 F.3d
15 1272, 1278–79 (9th Cir. 2001) (“[T]he court must ... determine whether the right violated
16 was clearly established in a ‘particularized ... sense....’ ”).

17 Plaintiff does not cite to any particular case that clearly establishes that Deputy
18 Smith’s alleged conduct was unlawful.⁶ Rather, Plaintiff merely argues, without citation,
19 that it has long been settled that a warrantless arrest requires probable cause. [Doc. No.
20 25 at 35.] This is obviously true, but it misses the point. The “clearly established”
21 inquiry cannot be resolved with so broad a stroke. This is true especially in light of the
22 recent decision in *White v. Pauly*, 137 S. Ct. 548 (2017). The Court there drove home the
23 “longstanding principle” that, in analyzing qualified immunity, “ ‘clearly established law’
24 should not be defined ‘at a high level of generality.’ ” *Id.* at 552 (*quoting Ashcroft v. al-*
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27 ⁶ It is the plaintiff who bears the burden of showing that the rights allegedly violated were “clearly
28 established.” *Shafer v. County of Santa Barbara*, 868 F.3d 1110, 1118 (9th Cir. 2017)(citations
omitted).

1 *Kidd*, 563 U.S. 731, 742 (2011)). If the courts deal too abstractly in this area, *White*
2 explained, “[p]laintiffs would be able to convert the rule of qualified immunity ... into a
3 rule of virtually unqualified liability simply by alleging violation of extremely abstract
4 rights.” *Id.* (quoting *Anderson v. Creighton*, 483 U.S. 635, 640 (1987)).

5 Even reading the factual record in the light most favorable to Plaintiff with regard
6 to the unlawful arrest claim, Deputy Smith's conduct was not so obviously outside the
7 constitutional pale that only the “plainly incompetent or those who knowingly violate the
8 law” would have done the same. *See Mueller*, 576 F.3d at 992 (quoting *Malley*, 475 U.S.
9 at 341). Therefore, Deputy Smith is entitled to qualified immunity for the unlawful arrest
10 claim.

11 C. Unreasonable Seizure (Excessive Force)(42 U.S.C. § 1983) against Deputy Smith.

12 Defendant argues the use of force to effect Plaintiff’s arrest was reasonable under
13 the circumstances and therefore did not violate the Fourth Amendment. [Doc. No. 16-1
14 at 22-25.] Defendant further argues that, even if the use of force was excessive, Deputy
15 Smith is entitled to qualified immunity. [Doc. No. 16-1 at 25-26.] Plaintiff argues there
16 are disputed facts as to whether the force used was reasonable [Doc. No. 25 at 18-22],
17 and qualified immunity is not warranted [Doc. No. 25 at 22-27.]

18 1. Excessive Force.

19 The constitutional right at issue when it is alleged that a law enforcement officer
20 used excessive force in the course of an arrest or other seizure is the Fourth Amendment
21 right to be free from “unreasonable... seizures.” U.S. Const. amend. IV; *see Graham v.*
22 *Connor*, 490 U.S. 386, 394, 395 (1989). “Determining whether the force used to effect a
23 particular seizure is reasonable under the Fourth Amendment requires a careful balancing
24 of the nature and quality of the intrusion on the individual's Fourth Amendment interests
25 against the countervailing governmental interests at stake.” *Graham*, 490 U.S. at 396
26 (internal quotation marks omitted). Because the reasonableness standard is not capable of
27 precise definition or mechanical application, “its proper application requires careful
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1 attention to the facts and circumstances of each particular case, including the severity of
2 the crime at issue, whether the suspect poses an immediate threat to the safety of the
3 officers or others, and whether he is actively resisting arrest or attempting to evade arrest
4 by flight.” *Id.* The most important *Graham* factor is the immediacy of the threat posed to
5 the safety of the officers or others. *Smith v. City of Hemet*, 394 F.3d 689, 702 (9th Cir.
6 2005) (en banc). Courts also consider the “quantum of force used to arrest the plaintiff,
7 the availability of alternative methods of capturing or detaining the suspect, and the
8 plaintiff’s mental and emotional state.” *Luchtel v. Hagemann*, 623 F.3d 975, 980 (9th Cir.
9 2010) (citations omitted). The reasonableness inquiry in excessive force cases is an
10 objective one, meaning that “the reasonableness of a particular use of force must be
11 judged from the perspective of a reasonable officer on the scene, rather than with the
12 20/20 vision of hindsight.” *Graham*, 490 U.S. at 396.

13 a. Severity of the Crime at Issue.

14 When Deputy Smith responded to the scene, it was his understanding that Platts
15 had accused Plaintiff of running over his foot with her car. Thus Deputy Smith was
16 responding to the scene of a potential assault with a deadly weapon. This is a serious
17 crime and weighs against a finding of excessive force. *Radwan v. City of Orange*, No.
18 SACV 08-0786AG, 2010 WL 3293354, at *17 (C.D. Aug. 18, 2010), *aff’d*, 519 F.App’x
19 490 (9th Cir. 2013), *citing Bryan v. MacPherson*, 608 F.3d 614, 625 (9th Cir. 2010).

20 b. Immediacy of Threat.

21 The “most important” *Graham* factor is whether the person “posed an immediate
22 threat to the safety of the officers or others.” *Mattos v. Agarano*, 661 F.3d 433, 441 (9th
23 Cir. 2011). Because of the proximity of Platts and other onlookers, Deputy Smith feared
24 that Plaintiff’s demeanor could reignite the confrontation with Platts. That presented a
25 significant safety risk to Platts, Plaintiff, the onlookers and Deputy Smith. In addition,
26 Deputy Smith was the only officer on scene and had yet to speak to anyone other than the
27 15 second exchange with Platts. Because of Plaintiff’s failure to provide identification,
28 and her forceful and continued resistance, Deputy Smith feared for his safety and the

1 safety of others present. Under these circumstances, it was reasonable for Deputy Smith
2 to believe that Plaintiff posed an immediate safety risk.

3 c. Active Resistance.

4 It is undisputed that Plaintiff failed to provide identification and actively resisted
5 being detained and arrested. A good portion of that resistance is captured on video and
6 cannot be disputed. Moreover, Plaintiff repeatedly confirmed that she resisted Deputy
7 Smith's efforts to restrain her or put her in the back of the patrol SUV. Thus, the use of
8 force by Deputy Smith started out as minor, only escalated as Plaintiff continued to resist
9 attempts to detain and restrain her, and was not out of line with the resistance Plaintiff
10 offered. *See Arpin v. Santa Clara Valley Trnsp. Agency*, 261 F.3d 912, 922 (9th Cir.
11 2001)(use of force necessary to put handcuffs on arrestee who stiffened her arm and
12 attempted to pull free to avoid handcuffing was not excessive).

13 d. Quantum of Force.

14 As discussed above, the quantum of force started out as minor, and only escalated
15 as Plaintiff continued to resist attempts to detain and restrain her. Thus, the quantum of
16 force used was not unreasonable.

17 e. Alternative Methods.

18 Here, Deputy Smith attempted multiple methods of getting Plaintiff to comply
19 before finally being able to restrain her and put her in the patrol SUV. After Plaintiff
20 failed to provide her identification, Deputy Smith warned her that she would have to sit in
21 the back of the patrol SUV if she did not comply and/or that she may be tased if she
22 failed to comply. He tried to grab her by the arm and guide her into the patrol SUV. He
23 took her to the ground, causing no identifiable injury. Because of her active resistance,
24 Deputy Smith accepted the assistance of an off-duty officer to help restrain Plaintiff.
25 Deputy Smith applied the handcuffs. After Plaintiff slipped out of her handcuffs, Deputy
26 Smith had to tighten them. Therefore, alternative methods were explored and reasonably
27 attempted.

1 f. Plaintiff's Mental and Emotional State.

2 Plaintiff does not argue that she had any particular mental illness. Therefore, this
3 is not a factor to be addressed.

4 g. Warnings.

5 Providing warnings is a factor to consider when conducting a *Graham* analysis.
6 *Deorle v. Rutherford*, 272 F.3d 1272, 1284 (9th Cir. 2001). Here, after Plaintiff refused
7 to provide her identification, Deputy Smith warned her that she would have to sit in the
8 back of the patrol car and might be tased if she did not comply. After Plaintiff continued
9 to resist, Deputy Smith elected to take Plaintiff to the ground and handcuff her instead of
10 tasing her. Nevertheless, Deputy Smith warned Plaintiff that he would use force against
11 her if she did not comply.

12 h. Conclusion.

13 After balancing the foregoing *Graham* factors and “[a]llow[ing] for the fact that
14 police officers are often forced to make split-second judgments—in circumstances that
15 are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in
16 a particular situation,” *Graham*, 490 U.S. at 397, the Court concludes as a matter of law
17 that Deputy Smith did not use excessive force. No reasonable jury could find that Deputy
18 Smith applied an excessive amount of force during the arrest of Plaintiff. *See, e.g., Miller*
19 *v. Clark County*, 340 F.3d 959, 963-68 (9th Cir. 2003) (use of trained police dog to “bite
20 and hold” suspect until officers arrived on the scene less than a minute later does not
21 constitute unreasonable excessive force under 4th Amendment when suspect poses
22 immediate threat to officers' safety, several attempts to arrest suspect with less forceful
23 means are unsuccessful as a result of suspect's defiance, and use of police dog is well-
24 suited to task of safely arresting suspect).

25 2. Qualified Immunity.

26 Even if there is a triable issue as to whether there was a Fourth Amendment
27 violation, and whether Deputy Smith used excessive force in arresting Plaintiff, Deputy
28 Smith is immune from the excessive force claim as a matter of law.

1 Plaintiff argues that it is clearly established that the way handcuffs were applied
2 constitutes excessive force. [Doc. No. 25 at 36.] Plaintiff also argues that it is clearly
3 established that “gang tackling can be actionable.” ⁷ [Doc. No. 25 at 37.] However, none
4 of the cases cited by Plaintiff meet the “exacting standard” required by the U.S. Supreme
5 Court to provide Deputy Smith with “clear notice” that using the amount of force he used
6 was unlawful. *S.B. v. County of San Diego*, 864 F.3d 1010, 1015 (9th Cir. 2017), *citing*
7 *White*, 137 S.Ct. at 551. While “no two cases are exactly alike” and the Court is not
8 required to find a case “directly on point,” Plaintiff has not provided any precedent
9 particularized to the facts of this case that would have put Deputy Smith on notice that his
10 conduct was unconstitutional. *Hughes v. Kisela*, 862 F.3d 775, 786-787 (9th Cir. 2016),
11 as amended (June 27, 2017) (internal citations omitted).

12 For example, none of the cases cited by Plaintiff regarding handcuffing⁸ involve a
13 suspect that was accused of running over someone with her car, refused to provide
14 identification, physically resisted being detained and slipped out of her handcuffs when
15 they were first applied. In addition, none of the “gang tackling” cases cited by Plaintiff
16 are applicable, as neither Deputy Smith nor the off-duty officer punched, struck, tackled,
17 or used hobbled restraints on Plaintiff. Moreover, Plaintiff’s attempts to distinguish
18 *Shafer v. County of Santa Barbara*, 868 F.3d 1110 (9th Cir. 2017) are unpersuasive. In
19 *Shafer*, the Ninth Circuit held that an officer was entitled to qualified immunity where the
20 officer “progressively increases his use of force from verbal commands, to an arm grab,
21 and then a leg sweep maneuver, when a misdemeanor refuses to comply with the
22 officer’s orders and resists, obstructs, or delays the officer in his lawful performance of
23 duties such that the officer has probable cause to arrest him in a challenging
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26 ⁷ This is not an accurate characterization of the facts in this case.

27 ⁸ A suspect can be painfully handcuffed under certain circumstances. *Strem v. County of San Diego*,
28 2017 WL 4861985, at *6 (S.D. Cal. Oct. 25, 2017).

environment.” 868 F.3d at 1117. The situation here is essentially the same. Therefore, Deputy Smith is entitled to qualified immunity for the excessive force claim.

D. State Law Claims.

In her third through sixth claims, Plaintiff alleges Deputy Smith was negligent in the manner in which he effected the arrest, made a false arrest, and the amount of force he used was excessive and constituted a battery. Plaintiff claims she sustained injuries and damages as a result of Deputy Smith’s conduct.

All of the state law claims depend on whether Deputy Smith acted reasonably and with reasonable force. To prevail on a claim for negligence, “Plaintiffs must show that the Defendant officers acted unreasonably and that the unreasonable behavior harmed Plaintiffs.” *Robinson v. City of S.D.*, 954 F. Supp. 2d 1010, 1027 (S.D. Cal. 2013) (citation omitted). The Fourth Amendment reasonableness standard applies to claims of unlawful arrest (*Robinson*, 954 F.Supp.2d at 1027) and to claims that officers were negligent in using excessive force. *See Young*, 655 F.3d at 1170 (*citing Munoz v. City of Union City*, 120 Cal. App. 4th 1077, 1108–09 (Cal. Ct. App. 2004)). Similarly, to prevail on a claim for battery, a plaintiff must show “an officer used unreasonable force against him to make a lawful arrest or detention.” *Arpin v. Santa Clara Valley Transp. Agency*, 261 F.3d 912, 922 (9th Cir. 2001). A state law battery claim is the equivalent of a federal claim of excessive force. *Brown v. Ransweiler*, 171 Cal. App. 4th 516, 527 (Cal. Ct. App. 2009). For the reasons set forth above, the undisputed facts show that Deputy Smith acted reasonably, had probable cause to arrest, and did not use excessive force. Therefore, Defendants’⁹ motion for summary adjudication of the state law claims is **GRANTED**.¹⁰

⁹ Plaintiff agrees that, as to the state law claims, the County can only be found liable if Deputy Smith is found liable. [Doc. No. 25 at 41.]


¹⁰ The Court does not reach the issue of whether the state law privileges apply. Given that there are no viable claims, the Court does not reach the issue of punitive damages.

1 CONCLUSION

2 For the reasons set forth above, Defendants' motion for summary judgment is
3 **GRANTED.** Judgment shall be entered in favor of Defendants and the Clerk of the
4 Court shall **CLOSE** the case.

5 **IT IS SO ORDERED.**

6 Dated: January 16, 2018

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8 Hon. Cathy Ann Bencivengo
9 United States District Judge
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